

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,

Plaintiff–Respondent;

v.

DARREN D. CHAKER,

Defendant–Movant.

Criminal No. H-12-168

(Civil No. H-17-1879)

UNITED STATES’ RESPONSE TO SEALED MOTION

Defendant–Movant Darren D. Chaker has moved for leave to file a motion under seal. Doc. 426.¹ Although the Government cannot view the sealed motion, Chaker’s proposed order suggests that the motion asks this Court to reinstate his dismissed 28 U.S.C. § 2255 motion. *See* Doc. 426-1. As explained below, this Court should dismiss the motion for lack of jurisdiction.

In July 2018, this Court dismissed Chaker’s § 2255 motion for want of prosecution after he failed to file a Court-ordered reply to the Government’s response seeking summary judgment. Doc. 408. Chaker then

¹ “Doc.” refers to docket entries in Criminal No. H-12-168.

moved for an extension of time to file a reply, which this Court denied in October 2018. Doc. 414. The Court simultaneously entered a final dismissal order. Doc. 415. The following month, Chaker timely appealed the Court's July and October 2018 orders. Doc. 416; *see* Fed. R. App. P. 4(a)(1)(B). The appeal is pending in the Fifth Circuit. *See United States v. Chaker*, No. 18-20785 (5th Cir.).

“[W]hen a notice of appeal transfers jurisdiction to” the circuit court of appeals, “district courts lose the ability to vacate their orders that have been appealed.” *Lopez Dominguez v. Gulf Coast Marine & Assocs., Inc.*, 607 F.3d 1066, 1073 (5th Cir. 2010) (per curiam). Because Chaker has appealed this Court's orders, including its dismissal of his § 2255 motion, this Court lacks jurisdiction to rule on any motion related to the dismissal of his § 2255 motion. Until it rules, the Fifth Circuit has exclusive jurisdiction over this case and, specifically, the motion's dismissal.

Accordingly, this Court should dismiss Chaker's sealed motion (Doc. 426) for lack of jurisdiction.

Respectfully submitted,

RYAN K. PATRICK
United States Attorney

CARMEN CASTILLO MITCHELL
Chief, Appellate Division

s/ Andrew R. Gould

ANDREW R. GOULD
Assistant United States Attorney
Attorney-in-Charge
Texas No. 24102713
Southern District of Texas No. 2403835
1000 Louisiana Street
Suite 2300
Houston, Texas 77002
Telephone: (713) 567-9102
Fax: (713) 718-3302
andrew.gould@usdoj.gov

CERTIFICATE OF SERVICE

I, Andrew R. Gould, certify that on March 4, 2019, a true and correct copy of the above *United States' Response to Sealed Motion* was served via CM/ECF filing on the United States District Clerk for the Southern District of Texas; and via United States certified mail, return receipt requested, on the following:

Darren D. Chaker
1140 Wall Street #77
La Jolla, CA 92038

s/ Andrew R. Gould
ANDREW R. GOULD
Assistant United States Attorney